



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1978

\* \* \*

NO. 78-786

\* \* \*

LA VELLE MC DANNALD,  
*Petitioner*  
V.

ATTORNEY GENERAL JOHN HILL and  
JUDGE HUGH GIBSON,  
*Respondents*

\* \* \*

BRIEF IN OPPOSITION TO  
PETITION FOR CERTIORARI

\* \* \*

JOHN L. HILL  
Attorney General of Texas

JAMES R. ANSELL  
Assistant County Attorney

2001 Ball  
Galveston, Texas 77550  
A/C 713 762-8621, Ext. 343

DAVID M. KENDALL  
First Assistant Attorney General

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
A/C 512 475-5861

*Attorneys For Respondents*

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\* \* \*

Respondents John Hill, Attorney General of the State of Texas, and Hugh Gibson, Judge of the 56th Judicial District Court of Galveston County, Texas, file this brief in opposition to the petition for a writ of certiorari.

**OPINIONS BELOW**

The memorandum opinion of the United States District Court granting Respondents' motion to dismiss and dismissing Petitioner's asserted cause of action is reported at 438 F. Supp. 785.

The affirmation of that decision by the United States Court of Appeals, without opinion, is reported at 575 F.2d 880.

THE "QUESTIONS PRESENTED" FOUND  
IN THE PETITION DO NOT COMPLY  
WITH THE MANDATE OF RULE 23(1)(c)  
OF THE SUPREME COURT RULES

To Respondents it would seem that the only issues which conceivably could be before this Court would be:

(1) Whether the United States District Court erred in sustaining a motion to dismiss filed under Rule 12(b)(1) and (6) in a suit for damages brought against the Attorney General of the State of Texas alleging that, as a result of a conspiracy, he refused to join Petitioner in filing an action in the nature of *quo warranto* to challenge the incorporation of a municipality some twelve years earlier.

(2) Whether the United States District Court erred in sustaining a motion to dismiss under Rule 12(b)(1) and (6) in a suit for damages brought against a district judge of the State of Texas alleging that, as a result of a conspiracy, he had sustained a motion for summary judgment against Petitioner in a lawsuit whereby Petitioner sought to challenge the incorporation of a municipality some ten or more years earlier.

STATEMENT OF THE CASE

The following facts are taken primarily from Plaintiff's pleadings in the federal courts supplemented, to some extent, by the published decisions involved.

The City of League City was incorporated in Texas as the result of an election held on December 9, 1961. It was certified under the state statutes as a Home Rule city on May 3, 1962. In 1971 or thereabouts the city sued Petitioner's husband, Cleaves McDannald, for delinquent ad valorem taxes. Mr. McDannald filed a counterclaim asserting that the assessment and collection of the taxes were illegal because of the fraudulent incorporation of the city. The city countered

with a plea in bar alleging that the counterclaim presented a collateral attack on the validity of the municipal incorporation which could be maintained only by the state in a *quo warranto* proceeding and also that the incorporation had been validated by Act of the Texas Legislature.

This matter came before Respondent Gibson in his capacity as district judge and he sustained the plea in bar and entered judgment against McDannald for taxes, penalty and interest.

Mr. McDannald appealed, in which appeal he was represented, among others, by a former United States Attorney for the Southern District of Texas and a former Attorney General of the State of Texas who, in addition, had served on the Supreme Court of Texas. In the appeal the judgment of the trial court was affirmed by the Court of Civil Appeals [528 S.W.2d 880 (Tex.Civ.App.--Houston [14th Dist.] (1975))] and the Supreme Court of Texas refused to grant a writ of error with the notation that there was no reversible error. This Court denied petition for writ of certiorari on October 4, 1976. 97 S. Ct. 162.

This suit was then filed on November 8, 1976 complaining of Attorney General John Hill and Judge Gibson, the complaint as to the former being that he had refused the request of Mrs. LaVelle McDannald that he join her in a *quo warranto* action. Parenthetically, the complaint also lists requests to Attorney General Crawford Martin, who was Attorney General Hill's predecessor, Attorney General Hill having taken office on January 1, 1973. As to Judge Gibson, the complaint alleges that on February 7, 1975 he entered a final judgment without hearing evidence.

Respondents filed a joint motion to dismiss asserting lack of jurisdiction of the subject matter and that the

complaint failed to state a claim upon which relief might be granted. On September 20, 1977 the motion was granted and a full and final judgment entered for Defendants dismissing Petitioner's cause with prejudice. It is from that order that this appeal has been taken and it is the propriety of that order which is at issue.

#### NO REASON EXISTS FOR GRANTING THE WRIT

Whether the petition states reasons which would warrant this Court assuming jurisdiction would seem to be governed, to some extent, by Rule 19(1)(b) of the Supreme Court Rules. Certainly the decision of the Court of Appeals is not in conflict with the decision of any other Court of Appeals and Petitioner has pointed to no conflict. Nor has the Court of Appeals decided an important state or territorial question in a way in conflict with applicable state or territorial law. It has not decided an important question of federal law which has not been, but should be, settled by this Court. Nor has it decided a federal question in a way in conflict with applicable decisions of the Supreme Court. Finally, it does not appear that the Court of Appeals has "so far departed" from accepted and usual judicial precedents as to call for an exercise of this Court's power of supervision.

Quite to the contrary, the decision of the district court, affirmed by the Court of Appeals, faithfully follows the precedents of this Court from *Bradley v. Fisher*, 13 Wall. 335 (1872) to *Stump v. Sparkman*, 98 S.Ct. 1099 (1978), as to Judge Gibson, and *Imbler v. Pachtman*, 424 U.S. 904 (1976), as to Attorney General Hill. The doctrine of judicial immunity, with its application to prosecutorial officials, is so well established that surely it cannot be questioned in this Court and it applies even though it may be alleged that the acts were done maliciously or corruptly.

None of the allegations of Mrs. McDannald, as Petitioner, show action by either of the Respondents in the clear absence of jurisdiction. To the contrary, their actions were clearly *within* their jurisdiction and thus were acts for which they are immune from actions for damages.

For the foregoing reasons, Respondents respectfully submit that the petition for a writ of certiorari should be in all things denied.

Respectfully submitted,

JAMES R. ANSELL  
Assistant County Attorney  
2001 Ball  
Galveston, Texas 77550  
A/C 713 762-8621, Ext. 343

JOHN L. HILL  
Attorney General of Texas

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DAVID M. KENDALL  
First Assistant Attorney General

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
A/C 512 475-5861

*Attorneys For Respondents*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Brief in Opposition to Petition for Certiorari has been placed, postage prepaid, in the United States First Class Mail on this the \_\_\_\_ day of December, 1978 addressed to Mrs. LaVelle McDannald, Prose, P.O. Box 863, League City, Texas, 77573.

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DAVID M. KENDALL